

Message Text

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ORIGIN EA-09

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FM SECSTATE WASHDC

TO AMEMBASSY TOKYO

INFO AMEMBASSY VIENTIANE

AMEMBASSY MANILA

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E.O. 11652: N/A

TAGS: EAID, EFIN, LA, US, JA

SUBJECT: US PARTICIPATION IN NAM NGUM II

REF: TOKYO 13873

1. FOLLOWING PROVIDED FOR YOUR USE IN RESPONSE TO INTEREST EXPRESSED BY JAPANESE FONOFF OFFICIALS IN US WITHDRAWAL OF FIVE MILLION DOLLAR LOAN PLEDGE TO LAOS FOR NAM NGUM II HYDRO-ELECTRIC PROJECT (REFTEL). IT SHOULD BE CLEAR THAT US DECISION WAS TAKEN ON BASIS OF OUR OWN PARTICULAR SITUATION AND THAT THERE IS NO DESIRE ON OUR PART TO INFLUENCE GOJ DELIBERATIONS ON THIS MATTER ONE WAY OR OTHER.

2. US WITHDREW LOAN PLEDGE ON SEPTEMBER 8 AFTER OUR AID
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MISSION TO LAOS HAD BEEN TERMINATED AND ALL USAID PERSONNEL

WITHDRAWN AT PGNU REQUEST. MOREOVER, IN JULY, THE AID CONTINUING RESOLUTION, CONTAINING A RIDER PROHIBITING ASSISTANCE TO VIETNAM, CAMBODIA OR LAOS WAS SIGNED INTO LAW. WHILE, STRICTLY SPEAKING, THE FIVE MILLION DOLLAR PLEDGE REPRESENTED THE PREVIOUS FY'S FUNDS, TO HAVE PROCEEDED WITH IT WOULD HAVE GONE AGAINST THE SPIRIT, IF NOT THE LETTER, OF THE LEGISLATION.

3. LEGAL RATIONALE FOR US WITHDRAWAL WAS AS FOLLOWS:

A. UNDER SECTION 9.4(B) OF US-LAO LOAN AGREEMENT, AID HAS THE RIGHT TO TERMINATE DISBURSEMENTS UNDER THE LOAN WHEN 'AN EVENT OCCURS THAT AID DETERMINES TO BE AN EXTRAORDINARY SITUATION WHICH MAKES IT IMPROBABLE THAT THE PURPOSES OF THE LOAN....WILL BE ATTAINED OR THAT THE BORROWER OR EDL WILL BE ABLE TO OR WILL PERFORM ITS OBLIGATIONS THEREUNDER.' IN LIGHT OF RECENT EVENTS IN LAOS, PARTICULARLY PGNU ACTIONS REGARDING TERMINATION OF AID MISSION IN LAOS, AID DETERMINED THAT SUCH AN EXTRAORDINARY SITUATION EXISTED AND EXERCISED ITS RIGHT TO TERMINATE DISBURSEMENTS UNDER THIS PROVISION.

B. AS REGARDS MULTILATERAL FUND AGREEMENT, WHILE PARA 10 PROVIDES FOR TERMINATION OF DISBURSEMENTS BY THE FUND UNDER CERTAIN CIRCUMSTANCES (AS OPPOSED TO TERMINATION OF CONTRIBUTIONS TO THE FUND BY INDIVIDUAL DONORS), THERE IS NO PROVISION DETAILING CONDITIONS UNDER WHICH DONORS MAY TERMINATE CONTRIBUTIONS TO THE FUND. SECTION 3.02 OF FUND AGREEMENT PROVIDES, HOWEVER, THAT 'EACH CONTRIBUTION TO THE FUND....WHETHER IN THE FORM OF A GRANT OR LOAN, SHALL BE....ON TERMS AND CONDITIONS, NOT INCONSISTENT WITH THIS FUND AGREEMENT....TO BE AGREED BETWEEN LAOS AND THE CONTRIBUTING PARTY.' THUS, OUR RIGHT TO TERMINATE CONTRIBUTIONS AS PROVIDED IN BILATERAL AGREEMENT IS EFFECTIVE ALSO UNDER MULTILATERAL AGREEMENT, UNLESS THAT RIGHT IS CONSIDERED INCONSISTENT WITH THE MULTILATERAL AGREEMENT. BILATERALS OF OTHER CONTRIBUTING PARTIES CONTAIN SAME TYPE OF PROVISION CONCERNING TERMINATION AS IN US-LAO AGREEMENT.

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C. IT CAN BE POINTED OUT TO GOJ THAT WHILE PGNU HAS COMPLAINED OF TERMINATION OF US PARTICIPATION, NEITHER IT NOR ADB NOR OTHER DONORS HAVE RAISED ANY QUESTION OF OUR LEGAL RIGHT TO DO SO. KISSINGER

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